

OFFICIAL FILE

ILLINOIS COMMERCE COMMISSION

ILLINOIS
COMMERCE COMMISSION

Rule 23 Order Filed: 10/04/01

OCT 5 12 39 PM '01

Oral Argument Held:

Justices:

Honorable John T. McCullough, J.

Honorable Sue E. Myerscough, J. - CONCUR

CHIEF CLERK'S OFFICE

Honorable James A. Knecht, J. - CONCUR

Chief Judge _____

Other _____

4-00-0922

ABBOTT LABORATORIES, INC.; A. FINKL and
SONS CO., INC.; CATERPILLAR, INC.;
DAIMLER CHRYSLER CORPORATION; FORD MOTOR
COMPANY; MODERNDROP FORGE COMPANY;
MONSANTO COMPANY; MOTOROLA, INC.;
NABISCO BRANDS, INC.; NORTHWESTERN STEEL
and WIRE COMPANY; VISKASE CORPORATION
OWENS-ILLINOIS, INC.; and ACME STEEL
COMPANY,

STATUS: ACTIVE
AUTHOR: JTM
PANEL: SEM JAK
RECUSALS:
SUBMITTED: 05/22/01
ASSIGNED:
READY: 05/07/01

Petitioners,
v.

THE ILLINOIS COMMERCE COMMISSION;
COMMONWEALTH EDISON COMPANY; CITIZENS
UTILITY BOARD, CITY OF CHICAGO, COOK
COUNTY STATE'S ATTORNEY; and THE PEOPLE
OF STATE OF ILLINOIS,
Respondents.

TRIAL JUDGE:
CONSOLIDATED WITH: 4-01-0034
TRIAL COURT NO.: 00-0369
00-0394

AGENCY: ICC ✓

Appellant

ATTORNEY: Eric Robertson
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618/876-4534

FEE: \$25 DATE: 11/06/00 RECEIPT NO.: 32239

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618/876-4534

PARTY: Abbott Laboratories, Inc.
RELATED NAME: Moderndrop Forge Company
RELATED NAME: Northwestern Steel and Wire Co.
RELATED NAME: Monsanto Company
RELATED NAME: Ford Motor Company
RELATED NAME: Acme Steel Company
RELATED NAME: Motorola, Inc.
RELATED NAME: Nabisco Brands, Inc.
RELATED NAME: Daimler Chrysler Corporation
RELATED NAME: A. Finkl & Sons Co., Inc.
RELATED NAME: Caterpillar, Inc.
RELATED NAME: Viskase Corporation Owens-Illinois, Inc.
AC DESG: Petitioners(AT)TC DESG:

Appellee

ATTORNEY: James E. Weging
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312/793-2877
312/793-1556

FEE: WVD DATE: RECEIPT NO.:
PARTY: Illinois Commerce Commission
RELATED NAME: I.C.C.
AC DESG: Respondent(AE) TC DESG:

Appellee

ATTORNEY: Paul T. Ruxin
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FEE: \$15 DATE: 04/12/01 RECEIPT NO.: 227
APPEARANCE ENTER DATE: 04/11/01

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APPEARANCE ENTER DATE: 04/11/01

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APPEARANCE ENTER DATE: 04/11/01

PARTY: Commonwealth Edison Company
AC DESG: Respondent(AE) TC DESG:

Appellee

FEE: N/A DATE: RECEIPT NO.:
PARTY: Citizens Utility Board
AC DESG: Appellee(AE) TC DESG:

Appellee

FEE: N/A DATE: RECEIPT NO.:
PARTY: City of Chicago
AC DESG: Respondent(AE) TC DESG:

Appellee

FEE: N/A DATE: RECEIPT NO.:
PARTY: Cook County State's Attorney
AC DESG: Respondent(AE) TC DESG:

Appellee

FEE: WVD DATE: RECEIPT NO.:
PARTY: People
AC DESG: Respondent(AE) TC DESG:

4-01-0034 THE CITY OF CHICAGO, a Municipal Corporation,
Petitioner-Appellant,
v.
THE ILLINOIS COMMERCE COMMISSION and COMMONWEALTH EDISON COMPANY,
Respondents-Appellees.

STATUS: ACTIVE
AUTHOR: JTM
PANEL: SEM JAK
RECUSALS:
SUBMITTED: 05/22/01
ASSIGNED:
READY: 04/30/01

TRIAL JUDGE:
CONSOLIDATED WITH: 4-00-0922
TRIAL COURT NO.: 00-0369
00-0394

AGENCY: ICC

Appellant

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FEE: WVD DATE: RECEIPT NO.:

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PARTY: Chicago, The City of
AC DESG: Appellant TC DESG: Petitioner

Appellee

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FEE: WVD DATE: RECEIPT NO.:

PARTY: Illinois Commerce Commission
RELATED NAME: I.C.C.
AC DESG: Appellee TC DESG: Respondent

Appellee

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FEE: \$15 DATE: 04/25/01 RECEIPT NO.: 256

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PARTY: Commonwealth Edison Company
AC DESG: Appellee TC DESG: Respondent

**** END OF FACT SHEET ****

NOS. 4-00-0922, 4-01-0034 cons.

ILLINOIS
COMMERCE COMMISSION

IN THE APPELLATE COURT

OCT 5 12 39 PM '01

OF ILLINOIS

CHIEF CLERK'S OFFICE

FOURTH DISTRICT

ABBOTT LABORATORIES, INC.; A. FINKL)
and SONS CO., INC.; CATERPILLAR, INC.;)
DAIMLER CHRYSLER CORPORATION; FORD)
MOTOR COMPANY; MODERNDROP FORGE COM-)
PANY; MONSANTO COMPANY; MOTOROLA,)
INC.; NABISCO BRANDS, INC.; NORTHWEST-)
ERN STEEL and WIRE COMPANY; VISKASE)
CORPORATION OWENS-ILLINOIS, INC.; and)
ACME STEEL COMPANY,)

Administrative
Review from the
Illinois Commerce
Commission
Nos. 00-0369
00-0394

Petitioners,)
v. (No. 4-00-0922))

THE ILLINOIS COMMERCE COMMISSION;)
COMMONWEALTH EDISON COMPANY; CITIZENS)
UTILITY BOARD; CITY OF CHICAGO; COOK)
COUNTY STATE'S ATTORNEY; and THE)
PEOPLE OF STATE OF ILLINOIS,)
Respondents.)

FILED
OCT - 4 2001
CLERK OF THE
APPELLATE COURT, 4TH DIST.

-----)
THE CITY OF CHICAGO, a Municipal)
Corporation,)
Petitioner-Appellant,)
v. (No. 4-01-0034))

THE ILLINOIS COMMERCE COMMISSION and)
COMMONWEALTH EDISON COMPANY,)
Respondents-Appellees.)

ORDER

In case No. 4-00-0922, petitioners, Abbott Laboratories, Inc.; A. Finkl and Sons Co., Inc.; Caterpillar, Inc.; Daimler Chrysler Corporation; Ford Motor Company; ModernDrop Forge Company; Monsanto Company; Motorola, Inc.; Nabisco Brands, Inc.; Northwestern Steel and Wire Company; Viskase Corporation Owens-Illinois, Inc.; and Acme Steel Company, bring this statutory direct review under the Illinois Public Utilities Act (Act) (220 ILCS 5/10-113, 10-201(a) (West 1998)) and Supreme Court Rule 335 (155 Ill. 2d R.

335) from a decision of the Illinois Commerce Commission (Commission). The petitioners in this case are collectively referred to as the Illinois Industrial Energy Consumers (IIEC). Named respondents are the Commission, Commonwealth Edison Company (ComEd), Citizens Utility Board, City of Chicago, Cook County State's Attorney, and the People of the State of Illinois. In case No. 4-01-0034, petitioner City of Chicago seeks statutory direct review of the same Commission decision identifying the Commission and ComEd as respondents. These review proceedings have been consolidated in this court. The City of Chicago, although being named a respondent in case No. 4-00-0922, has adopted the brief of the IIEC. The Commission and ComEd have each filed a brief standing as the responsive brief for both cases, and the IIEC has filed a reply brief.

The issues are whether (1) this court has jurisdiction of these review proceedings and (2) the Commission properly approved the transfer of ComEd's nuclear decommissioning trust funds under sections 16-111(g) of the Act (220 ILCS 5/16-111(g) (West Supp. 1999)) and 8-508.1 of the Act (220 ILCS 5/8-508.1 (West 1998)). We affirm.

ComEd's brief raised the issue of this court's jurisdiction, and the reply brief of IIEC and the City of Chicago responded to that argument. On June 6, 2001, this court directed the Commission to address the issue of this court's jurisdiction. On June 21, 2001, the Commission filed its response. On June 25, 2001, the IIEC and the City of Chicago filed a motion for leave to

file a response to the Commission's jurisdictional filing, along with a copy of that response. We now grant the IIEC and the City of Chicago's motion to file their response, and we have considered all of these documents.

This court has jurisdiction. The record reflects that the Commission issued its decision on August 17, 2000. On August 28, 2000, applications for rehearing were timely filed by IIEC and the City of Chicago (220 ILCS 5/16-111(g)(vi) (West 1998) (10-day limit for filing an application for rehearing)). August 27, 2000, was a Sunday (5 ILCS 70/1.11 (West 1998)). On September 14, 2000, the Commission filed a notice of action stating that the Commission "has entered an order to deny" the motion to stay filed by IIEC, the application for rehearing filed by IIEC, the application for rehearing filed by the City of Chicago, the application for rehearing filed by the County of Cook, and a motion for leave to file instanter on behalf of Cook County. The record does not contain any specific order referred to in the notice. On September 21, the Commission issued a corrected notice stating the Commission had, on September 13, entered an order as stated in its September 14 notice except that no order was entered in the application for rehearing filed by Cook County. The record suggests that the correction merely showed that because Cook County's motion for leave to file instanter was denied, there was no reason to rule on Cook County's application for rehearing. Section 10-113(a) grants the Commission authority at any time, upon notice and an opportunity to be heard, to "alter or amend any *** decision made by it."

220 ILCS 5/10-113(a) (West 1998). The corrected notice of action filed on September 21, 2000, substantially complied with section 10-113(a). The Act requires the appearing party to file its petition for review within 35 days of the date of service of a copy of the decision denying the rehearing on the effected party. 220 ILCS 5/10-201(a) (West 1998). The appealing parties filed their petitions for review on October 26, 2000, the 35th day after the date of service of the corrected notice of denial of the applications for rehearing. The petitions for review were timely filed.

A decision of the Commission is considered prima facie reasonable, its findings of fact are deemed prima facie true, and the party appealing bears the burden of "proof" on all issues raised on review. 220 ILCS 5/10-201(d) (West 1998). The scope of review of this court is limited to determining whether (1) the Commission had "jurisdiction," meaning it acted within the scope of its authority; (2) it made adequate findings in support of its decision; (3) its decision was supported by substantial evidence in the record; and (4) constitutional rights were not violated. 220 ILCS 5/10-201(e)(iv)(A) through (e)(iv)(C) (West 1998); Lakehead Pipeline Co. v. Illinois Commerce Comm'n, 296 Ill. App. 3d 942, 949, 696 N.E.2d 345, 350 (1998); Central Illinois Public Service Co. v. Illinois Commerce Comm'n, 268 Ill. App. 3d 471, 476, 644 N.E.2d 817, 821 (1994). Commission decisions are entitled to great deference because it is an administrative body possessing expertise in the field of public utilities, but the Commission's determinations of questions of law are not binding on this court. Archer-

Daniels-Midland Co. v. Illinois Commerce Comm'n, 184 Ill. 2d 391, 397, 704 N.E.2d 387, 390 (1998).

The petitioners challenge the Commission's authorization of the transfer of funds in ComEd's nuclear decommissioning trusts. Petitioners make the seemingly incongruous argument that (1) the Commission had no authority to transfer the trust funds and (2) the Commission abrogated its authority over the funds. To the extent that the question of the Commission's authority over the trusts involve statutory construction, a question of law exists that this court considers de novo. Branson v. Department of Revenue, 168 Ill. 2d 247, 254, 659 N.E.2d 961, 965 (1995). The question of whether the trust funds were assets of ComEd could be a question of fact, but we find the question is settled satisfactorily by reference to the trust agreements and the controlling statutes. An equally significant question is whether ComEd and the Commission can utilize section 16-111(g) of the Act or whether the subject transfer is governed by section 16-114.1 of the Act (220 ILCS 5/16-114.1 (West Supp. 1999)).

The cardinal rule of statutory construction is to ascertain and give effect to the intent and meaning of the legislation, and the statutory language is the best indication of legislative intent. Solich v. George & Anna Portes Cancer Prevention Center of Chicago, Inc., 158 Ill. 2d 76, 81, 630 N.E.2d 820, 822 (1994). In determining legislative intent, courts look to the evils sought to be remedied and the purposes to be achieved. American Stores Co. v. Department of Revenue, 296 Ill. App. 3d 295,

299, 694 N.E.2d 644, 647 (1998). If the statute is ambiguous, substantial weight is given to the interpretation of the agency charged with its administration. Freeman United Coal Mining Co. v. Industrial Comm'n, 317 Ill. App. 3d 497, 503, 739 N.E.2d 1009, 1014 (2000). While deference is generally accorded the construction placed on a statute by the agency granted the authority to administer that statute, the courts are not bound by an agency's erroneous construction of the statute. Taylor v. Cook County Sheriff's Merit Board, 316 Ill. App. 3d 574, 579, 736 N.E.2d 673, 677 (2000).

This proceeding was initiated by ComEd on May 22, 2000, seeking the Commission's approval of its intent to transfer to its affiliate, Exelon Genco, all nuclear electric generating assets, together with certain related assets and obligations, and its wholesale marketing business, including any and all real and personal property used to conduct the business, in exchange for ComEd common stock. To implement the transfer and posttransfer operations, ComEd expressed its intent to enter into various agreements with Exelon Genco, including a "Contribution Agreement," used to transfer various assets and obligations. In this transaction, ComEd would transfer all six of its nuclear stations and all assets, including investments, held in ComEd's decommissioning trusts. Pursuant to a Commission order entered December 7, 1988 (docket No. 88-0298), ComEd established two trusts, a nontax-qualified decommissioning trust and a tax-qualified decommissioning trust. Although the numbers of the specific provisions differ

slightly in each trust agreement, article II of each trust agreement provides that (1) ComEd's interests in the trusts are not transferrable, voluntarily or involuntarily; (2) the trusts may be terminated to the extent "allowed or provided under the Illinois Statute, the NRC Rule or any Future Order" upon ComEd disposing of any interest in the subject plant; and (3) upon termination, the trustee shall distribute the entire remaining assets of the trust to ComEd, provided that there is to be no such distribution without either (a) "an order of the ICC or NRC specifically authorizing such distribution" with all necessary consents and approvals to distribution obtained or (b) ComEd furnishing an opinion of legal counsel to the effect that no such order is necessary and all necessary consents and approvals have been obtained.

The Commission relied on ComEd's accounting treatment of the funds in determining whether the trust funds were assets of ComEd. Petitioners argue that the law of trusts governs. It is not that simple. The decommissioning trusts in this case are governed by statutes. See, e.g., 26 U.S.C.A. §468A (West Supp. 2001) (setting out special rules for taxation of nuclear decommissioning costs).

Section 8-508.1(b) of the Act requires a public utility to establish two decommissioning trusts, one tax qualified and one nontax qualified, for each nuclear power plant. 220 ILCS 5/8-508.1(b) (West 1998). Section 8-508.1(c) of the Act provides for funding and maintenance of the trusts. 220 ILCS 5/8-508.1(c) (West 1998). Distribution may be made from a nuclear decommissioning

trust only (1) to pay administrative costs, income tax, and other incidental expenses of the trust; (2) to satisfy the utility's liabilities for nuclear decommissioning costs; and (3) as a refund to the utility of trust assets in excess of nuclear decommissioning costs provided however that the utility use those refunded amounts for the purpose of refunds or credits to the utility's customers as soon as practicable. 220 ILCS 5/8-508.1(c)(3)(i), (c)(3)(ii) (West 1998). Income earned on the trust fund is accumulated in the trust. 220 ILCS 5/8-508.1(c)(3)(vii) (West 1998). Section 8-508.1(c)(3)(iii) provides:

"In the event a public utility sells or otherwise disposes of its direct ownership interest, or any part thereof, in a nuclear power plant with respect to which a nuclear decommissioning fund has been established, the assets of the fund shall be distributed to the public utility to the extent of the reductions in its liability for future decommissioning *** of such nuclear power plant and the liabilities that have been assumed by another entity. The public utility shall, as soon as practicable, provide refunds or credits to its customers representing the full amount of the reductions in its liability for future decommissioning." (Emphasis added.) 220 ILCS 5/8-508.1(c)(3)(iii) (West 1998).

Irrespective of how ComEd's accountant characterizes the trust fund in the company's books, it is clear that section 8-508 places obligations on ComEd. We particularly note that this section is included in article VIII of the Act encompassing service obligations and conditions. An obligation is a duty imposed by law. Black's Law Dictionary 1102 (7th ed. 1999). Section 8-508 obligates ComEd to create and fund the trusts to pay the decommissioning costs and to refund the excess to the customers. On the other hand, it does authorize the use of the trust funds for payment of the liabilities incurred by ComEd for decommissioning costs. One ordinary definition of the term "assets" is property of a person or entity subject to the payment of the person's or entity's debts. See Webster's Third New International Dictionary 131 (1993).

The distinction in these terms is important because ComEd and the Commission chose to proceed in this matter under section 16-111(g) of the Act. As the Commission decision readily notes, section 16-111(g) provides the electric utility with authority to engage in certain types of transactions, including the right to "sell, assign, lease or otherwise transfer assets *** and as part of such transaction enter into service agreements, power purchase agreements, or other agreements with the transferee." 220 ILCS 5/16-111(g)(3) (West Supp. 1999). The Commission, in determining the trust funds to be assets of ComEd, relied on the language in section 8-508.1 that the trusts "shall be separate from all other accounts and assets of the public utility." 220 ILCS 5/8-

508.1(a)(3) (West 1998).

The transfer of trust funds in this case involves as much the assumption of a legal obligation by Exelon Genco as the transfer of assets to it by ComEd. In this case, we must determine whether the Commission choosing simply to apply section 16-111(g) of the Act ignored sections 8-508.1(c)(3)(iii) and 16-114.1. We read the emphasized language in section 8-508.1(c)(3)(iii) quoted above to demonstrate the legislature's intent and expectation that another party may assume liabilities for nuclear decommissioning costs.

Section 16-114.1 specifically provides for the recovery of decommissioning costs in connection with a nuclear power plant sale agreement. Generally, where there is an irreconcilable conflict, specific statutes take precedence over general statutes. See In re Tiney-Bey, 302 Ill. App. 3d 396, 400, 707 N.E.2d 751, 755 (1999). However, it is clear from its terms that section 16-114.1 does not apply to this case.

Section 16-114.1 only applies to an electric utility that enters into an agreement to sell a nuclear power plant and, as part of the agreement, agrees to (1) make contributions to a decommissioning trust in specific amounts for a specific period of time after the sale is consummated or (2) purchases an insurance instrument to provide for the payment of decommissioning costs. 220 ILCS 5/16-114.1(a) (West Supp. 1999). ComEd's application elected for neither of these options, choosing instead to ask the Commission to authorize Exelon Genco to take over the decommission-

ing obligations and undertake to continue funding and maintain the trusts for these nuclear power plants. The Commission could reasonably find that section 16-114.1 did not set out the exclusive options available when a nuclear power plant is sold. The major purpose for these statutes is to ensure that funds are available to pay the decommissioning costs when a nuclear power plant is closed. Petitioners' position would require ComEd to immediately refund to consumers the funds currently in the trusts because the transactions in this case do not, in themselves, amount to closing of any nuclear station, although one of the six stations involved is already retired. However, the Act would require Exelon Genco to maintain decommissioning trusts, and the only way it could adequately fund those trusts to cover decommissioning costs for these nuclear power plants, some of which might be imminent in light of the age of the stations, is to increase rates. The purpose of the Act is to ensure the providing of reliable energy services to the citizens of the State "at the least possible cost." 220 ILCS 5/1-102(a) (West 1998). Were we to adopt the petitioners' interpretation of the statutes, ComEd would be required to refund funds to customers and the Commission would be required to authorize increased electrical rates by Exelon Genco. This giving with one hand and taking away with the other is an absurd result not intended by the legislature. The courts construe statutes so as to avoid absurd, unjust, or unreasonable results. In re County Collector of Du Page County for Judgment for Taxes for Year 1993, 187 Ill. 2d 326, 332, 718 N.E.2d 164, 168 (1999).

The Commission's finding that the decommissioning trust funds are assets to the public utility is supported by substantial evidence and is not contrary to law. The Commission has the authority under section 16-111(g) to authorize the transfer of the trusts as it did in this case, and the Commission did not abrogate its authority over the trusts.

The order of the Commission is affirmed.

Affirmed.

McCULLOUGH, J., with MYERSCOUGH and KNECHT, JJ.,
concurring.